STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 6, 2006
v	No. 260958 Dickinson Circuit Court
DEBRA MARIE CARR, Defendant-Appellant.	LC No. 04-003208-FH

Before: Sawyer, P.J., and Kelly and Davis, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions of operating a motor vehicle while under the influence of liquor (OUIL), third offense, MCL 257.625(9)(c),[1] and leaving the scene of an accident where vehicle damage has resulted, MCL 257.618. We affirm, but remand for a correction of defendant's judgment of sentence.

Defendant was involved in an accident with John Derks. Although defendant spoke with Derks after the accident, agreeing to follow him to the police station, defendant instead went home. Derks went to the police station and reported the accident and defendant's license plate number. Two officers went to defendant's home and attempted to contact her, but she did not answer the door or her telephone. After learning from defendant's friend that defendant was home, the officers entered defendant's garage, looking for her. The officers did not find defendant, but saw paint transfer on defendant's vehicle and a half full bottle of beer in the garage. Defendant eventually spoke with the officers and denied involvement in any accident. After the officers obtained defendant's consent to search the garage, they took six photographs of the damaged vehicle. A preliminary breath test showed defendant's alcohol level to be .218 and a subsequent Data Master test showed defendant's alcohol level to be .19.

[1] MCL 257.625 was amended by 2003 PA 61, effective September 30, 2003 (and again by 2004 PA 62, effective May 3, 2004). The offense in this case took place on January 15, 2004. The judgment of sentence indicates that defendant was convicted pursuant to 257.625(6)(d), which is incorrect under the statute effective at the time of the offense. The correct citation is MCL 257.625(9)(c).

Defendant first argues that the police performed "a warrantless search of defendant's garage not permitted by the Michigan or Federa[l] constitutions, where no exigent circumstances existed that would allow such a search." We disagree. Because the alleged error raises a constitutional issue and is unpreserved, the plain error rule applies. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). To avoid forfeiture under the plain error rule, a plain error must have occurred that affected the defendant's substantial rights. *Id.* at 763. "We review constitutional questions de novo." *People v Frohreip*, 247 Mich App 692; 637 NW2d 562; 2001.

The United States and Michigan Constitutions protect an individual from unreasonable searches. US Const, Am IV; Const 1963, art 1, § 11; *People v Davis*, 442 Mich 1, 9-10; 497 NW2d 910 (1993). "[T]o search a dwelling for evidence of a crime, the police must have probable cause to search, and must also have a warrant based on that probable cause." *Davis, supra* at 10. An exception to the warrant requirement is the emergency-aid exception. *Id.* at 11. Under that exception, "police may enter a dwelling without a warrant when they reasonably believe that a person within is in need of immediate aid. They must possess specific and articulable facts that lead them to this conclusion." *Id.* at 25-26. Furthermore, "the entry must be limited to the justification therefore, and the officer may not do more than is reasonably necessary to determine whether the person is in need of assistance, and to provide that assistance." *Id.* at 26.

In this case, the officers' first entry into defendant's garage was justified by the emergency-aid doctrine. The officers had information that defendant was involved in an automobile accident. The officers knocked repeatedly on the front and back doors of defendant's home and attempted to call defendant on the telephone. But defendant did not answer. Defendant's friend informed the officers that defendant was home. Based on this information, the officers had a reasonable belief that defendant was in the vehicle in the garage and in need of aid. Both officers testified that they entered the garage because they were concerned that defendant was still in her vehicle and was injured. Furthermore, the scope of the officers' entry into the garage did not exceed the justification for the entry. The officers entered the garage and looked inside the vehicle for defendant. The officers left the area once they saw that defendant was not in the garage. Therefore, we conclude that this search of defendant's garage was justified by the emergency-aid exception to the warrant requirement and was not unconstitutional.

The officers later entered the garage again to photograph defendant's vehicle and the beer bottle. One officer testified that the second entry into the garage was made pursuant to defendant's verbal consent. Defendant contends on appeal that her consent to the search was invalid because she was intoxicated. However, defendant does not offer any authority in support of this assertion. "An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue." *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004).

Defendant also argues that trial counsel was ineffective for failing to "object to the police's [sic] warrantless search of defendant's garage." Because we conclude that the search was legal under the emergency-aid exception to the warrant requirement, defendant's ineffective assistance of counsel argument is without merit. "Ineffective assistance of counsel cannot be predicated on the failure to make a frivolous or meritless motion." *People v Riley* (*After Remand*), 468 Mich 135, 142; 659 NW2d 611 (2003).

We affirm, but remand for a correction of the judgment of sentence to reflect that defendant was convicted for OUIL, third offense under MCL 257.625(9)(c). We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Kirsten Frank Kelly